



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. Ser. No. : 10/606,815
Confirmation No. 5495
Applicant : Hans Van Der Touw
Filed : June 26, 2003
TC/A.U. : 3725
Examiner : Jimmy T. Nguyen
Docket No. : 119304-1001

AFFIDAVIT OF KEVIN TIPPETS UNDER 37 C.F.R. § 1.132

I, Kevin Tippetts, depose and say the following of my own personal knowledge or on information and belief:

1. My name is Kevin Tippetts. I am employed by NexCycle, Inc., the assignee of the above-identified patent application.

2. I have been working in the recycling industry for more than 14 years, and am familiar with the design and construction of recycling centers used in the recycling industry.

3. I have reviewed, and am very familiar with, the content of United States Patent Application Serial No: 10/606,815, entitled TRANSPORTABLE RECYCLING CENTER, filed June 26, 2003 (the "Application").

4. I have reviewed, and am very familiar with the Microsite, the commercial embodiment of the transportable recycling center described and claimed in the Application.

5. I have reviewed, and am familiar with, the references cited by Patent Examiner Jimmy T. Nguyen in the Official Action mailed on March 11, 2004, including the following:

US Patent No. 5,842,652	Warsing et al.
US Patent No. 5,001,977	Tracy
US Patent No. 5,111,727	Schuize, Jr.
US Patent No. 5,425,458	Gilcreest
US Patent No. 5,078,567	Lombardo

6. I have reviewed, and am familiar with, the arguments against patentability presented by Examiner Jimmy T. Nguyen in the Official Action mailed by the U.S. Patent Office on March 11, 2004.

7. It is my opinion that it would not have been obvious to combine the references cited by Examiner Nguyen in the manners described in the Official Action. It is my opinion that the Examiner has identified no motivation or suggestion within the references themselves to combine the references in the manner he suggests, nor, in my opinion, would the knowledge of one of skill in the art of collection center design necessarily lead one of skill in the art to combine the references in the various manners the Examiner suggests.

8. Further, it is my opinion that there is no other collection center available which provides the combination of advantages inherent to the Microsite collection center.

9. The development of the Microsite arose out of a long-felt need in the recycling industry. Prior to the introduction of the Microsite, it had been increasingly difficult to get contracts to open grocery store recycling centers from grocers, landlords

and cities due to the size, aesthetics and out-dated equipment of then-existing collection centers. With parking spaces being at a premium, adding a recycling center that required 3 to 4 spaces was difficult for grocers and landlords to justify. These recycling containers were large and technologically outdated. Without conveniently located and desirable recycling operations, fewer centers were being opened and patronized. This is evident by the declining California recycling rate over the past years. (See Exhibit 1, Report from the California Department of Conservation.) There was a demand by grocers, landlords and cities to develop an alternative to existing equipment options. Nexcycle's client grocers asked NexCycle to develop a more workable solution. The Microsite is the solution long requested by NexCycle's clients. In one commercial embodiment, the Microsite will fit within the confines of one standard grocery store parking space; it is totally portable, requires no electricity and fits aesthetically into any community.

10. Owing to its unique combination of features, the NexCycle Microsite has met with surprising success in the marketplace. At the end of 2003, NexCycle had successfully signed new contracts with 4 major California grocers due to the development of the new Microsite design.

11. The first six months of 2004 have been unusual in site growth and performance. Nexcycle has opened 40 sites in the period from January to June 2004, compared to only 10 sites in the period from January to June 2003. That is an increase of 300% in new site growth in 2004 as compared to 2003. Typically, new collection centers are slow to attract business and customers coming to recycle. In the first six months of 2004, NexCycle is averaging an increase of 12.3% in total average pounds recycled per site per day as compared to the same period in 2003. (See Exhibit 2) Typically, it would

be expected that the average pounds per day per site would be less in 2004 verses 2003, owing to the increased number of sites. In other words, new sites typically produce lower volumes until the customer base is established, and such lower volumes would be expected to dilute the averages.

12. One strong competitive distinction for these grocers is the small footprint design of the Microsite. In one commercial embodiment, the Microsite footprint is only 136 sq. feet (17' x 8') compared to a competitor at 476 square feet (24' x 17'). This design is one-third the size of its closest competing design. The inventors of the present invention were able to develop this small unit due to development of the battery-powered compaction and internal compartmentalization of material storage and workspace, as outlined in the pending claims.

13. It is my opinion that the success of the Microsite collection center is attributable to a combination of features, which include the following:

In one commercial embodiment, the Microsite collection center will fit within the confines of one standard grocery store parking space.

The Microsite collection center is totally portable.

The Microsite collection center requires no external electricity.

14. It is further my opinion that the above advantages are largely attributable to the integration of the following elements in a single unit:

The integration of a work area and a storage area in a single unit.

The integration of a compactor within the center.

The integration of a rechargeable battery to power the center.

15. All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true. These statements are

made with the knowledge that willful false statements so made are punishable by fine or imprisonment or both under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

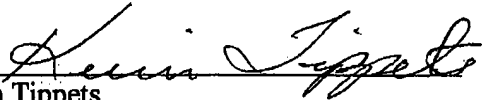

Kevin Tippetts

Exhibit 1



DEPARTMENT OF CONSERVATION STATE OF CALIFORNIA

December 5, 2003

NOTICE

To: All Interested Parties

Subject: Biannual Report of Beverage Container Sales, Returns, Redemption, and Recycling Rates for January-June 2003

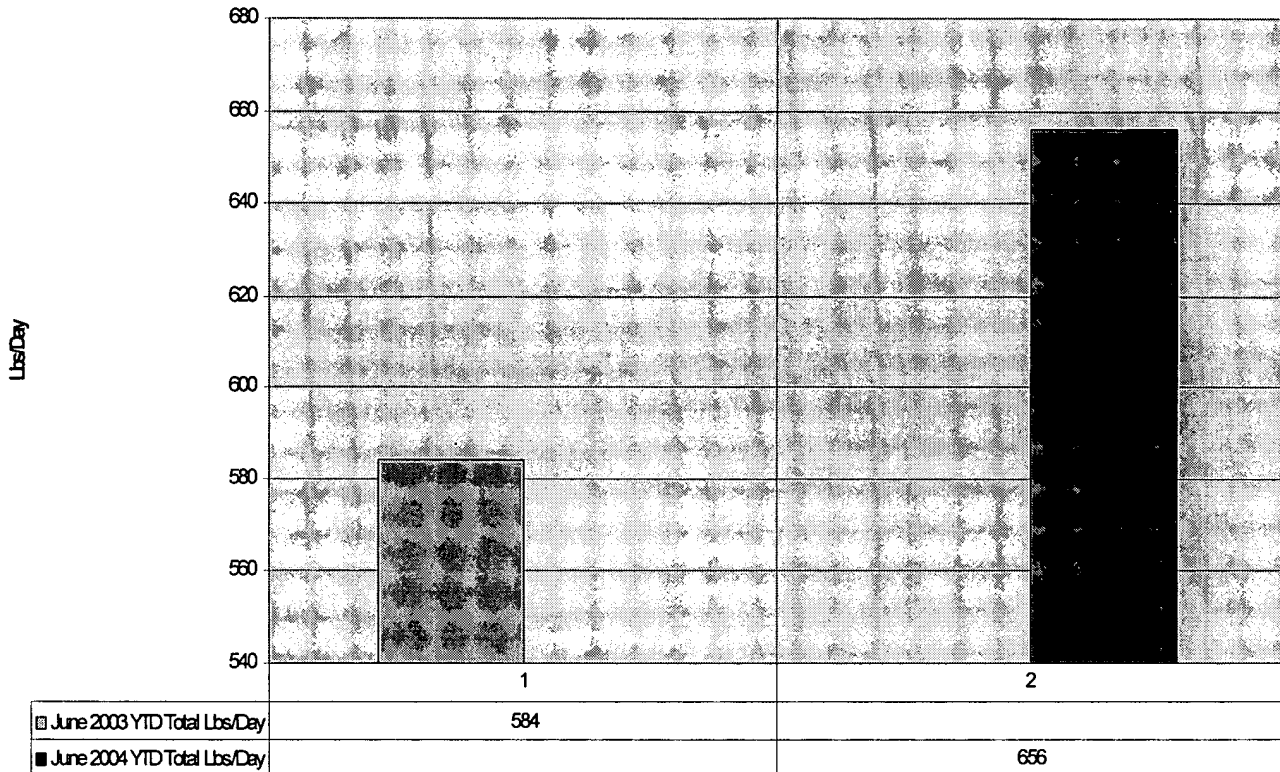
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803 K STREET
SUITE 2400
SACRAMENTO
CALIFORNIA
95814

Rates		Containers				3 of 3
	Redemption	Recycling	Sold	Recycled	Refillable	Postfilled
ALL MATERIALS						
2002	60	58	18,176,119,077	10,629,955,059	380,457	837,793,099
2001	62	60	17,513,174,192	10,518,747,707	378,452	887,174,501
2000	62**	61**	16,558,409,123	10,190,977,803	4,193,806	808,294,098
1999	76	74	13,169,728,648	9,742,102,332	56,547,053	761,054,109
1998	76	74	13,107,568,019	9,646,672,886	78,152,008	751,835,350
1997	78	76	12,889,096,434	9,666,106,446	90,836,718	759,117,911
1996	78	76	12,508,701,533	9,439,039,918	102,421,509	685,927,048
1995	83	81	12,237,873,040	9,786,426,401	111,828,496	769,229,625
1994	80	79	12,803,124,621	10,024,685,614	125,310,440	612,123,877
1993	82	81	12,579,084,739	10,083,591,274	147,140,942	642,306,615
1992	85	82	13,044,123,346	10,469,716,585	168,996,240	982,078,388
1991	82	80	13,110,373,852	10,339,154,185	198,954,148	699,826,773
1990	70	70	13,682,053,525	9,294,834,458	215,792,631	345,400,108
1989	56	56	12,935,531,202	6,923,416,826	304,045,641	267,162,865
1988	55	52	12,562,618,766	6,105,812,527	441,803,396	685,648,387

***Due to the addition of new beverages on January 1, 2000 from the passage of SB332, the calculation of the redemption and recycling rates for 2000 was based on the sales and return data reported from March - December 2000. This is to account for the two month sales lag. However, the totals for the sales, recycled, refillable and postfilled columns are for January - December 2000.*

Exhibit 2

Y.Q.Y. Comparison - Total Lbs/Day - June YTD 12.32%/Increase



June 2003 YTD Total Lbs/Day June 2004 YTD Total Lbs/Day